Pirate Journal

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Robert Van Tuinen explains the importance of Liberty to Marisa Segovia while distributing materials in the MJC East Campus Student Center.

Victory: Modesto Junior College Settles Student's First Amendment Lawsuit

FRESNO, Calif., February 25, 2014—Monday evening, February 24, 2014, California's Modesto Junior College (MJC) agreed to settle a First Amendment lawsuit filed last October by student Robert Van Tuinen, whom the college prevented from handing out copies of the Constitution on Constitution Day. The videotaped incident drew national media attention.

As part of the settlement, MJC has revised its policies to allow free speech in open areas across campus and has agreed to pay Van Tuinen $50,000*. Van Tuinen was represented by the firm of Davis Wright Tremaine LLP in Washington, D.C., and assisted by the Foundation for Individual Rights in Education (FIRE).

"FIRE is very pleased that Robert Van Tuinen and Modesto Junior College have reached this settlement—and that Modesto Junior College students will now be able to exercise their First Amendment rights across campus," said FIRE President Greg Lukianoff. "But because 59% of colleges nationwide maintain policies that clearly and substantially restrict student speech, there's much more work to be done."

Last September 17—the 226th anniversary of the Constitution's signing—MJC prevented Van Tuinen from handing out copies of the Constitution in a grassy area by the student center. Van Tuinen notified FIRE about the situation, and FIRE promptly wrote MJC, asking the college to rescind its unconstitutional policies. With no satisfactory response forthcoming, on October 10, with FIRE's assistance, Bob Corn-Revere, Ronald London, and Lisa Zycherman of Davis Wright Tremaine filed a federal lawsuit on Van Tuinen's behalf. On December 17, MJC agreed to suspend enforcement of the policies in question while settlement talks took place.

Late Monday, both parties signed a settlement agreement that awards Van Tuinen $50,000* and reflects three new policies that open up the campus to free expression—MJC's policy on time, place, and manner, the accompanying administrative procedures, and MJC's Expectations for On-Campus Free Speech Activities. Taken together, these new policies abolish the requirement that students and faculty seek MJC's permission to speak. Free expression is rightfully now allowed in all "areas generally available to students and the community," which include "grassy areas, walkways, and other similar common areas." The settlement also prohibits MJC from reverting to the policies that were in place when Van Tuinen's right to distribute the Constitution to his fellow students was denied.

"I am thrilled with this outcome and I am grateful to my attorneys and FIRE for securing this agreement," said Van Tuinen. "Now the Modesto Junior College community and I will be able to engage in free discussion on campus. I encourage students at other schools with restrictive free speech policies to stand up for their rights."

FIRE is a nonprofit educational foundation that unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals from across the political and ideological spectrum on behalf of individual rights, freedom of expression, academic freedom, due process, and rights of conscience at our nation's colleges and universities. FIRE's efforts to preserve liberty on campuses across America can be viewed at thefire.org.

* The legal fees alone are very likely to exceed the $50,000 that MJC is obligated to pay
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Press Release from the Foundation for Individual Rights in Education

NEW CLUB: PIRATES FOR LIBERTY

by Bob L. Van Tuinen

There is a new club on campus. It is Pirates for Liberty. Pirates for Liberty is a chapter of a national organization called Young Americans for Liberty; a classically liberal and traditionally conservative pro-liberty organization.

There are nearly 500 chapters and 125,000 student activists on college campuses in the United States. Quoting from the http://www.yaliberty.org/website, "YAL seeks to identify, educate, train, and mobilize young people committed to winning on principle." This is the mission statement of Young Americans for Liberty. Their goal "is to cast the leaders of tomorrow and reclaim the policies, candidates, and direction of our government."

The Pirates for Liberty club will be meeting twice monthly. The first Thursday of the month we will hold a club business meeting and the third Thursday of the month we will host a speaker or have a discussion meeting about topics relevant to liberty, the constitution, politics, philosophy, and other issues facing MJC students today. Both of these meetings will begin at 5 pm, and will meet in Forum 101 on the East Campus.

For January our discussion meeting was led by Genesis Ramirez and Rob Van Tuinen who discussed the National 40 Year Old War on Drugs, trillions of dollars spent, and how successful it has been, or hasn't been. In the future we hope to bring in speakers from the Foundation for Individual Rights in Education (FIRE), the Independent Institute, and the Reason Foundation, as well as hosting panels and debates.

We hope to see you at our discussion meetings and encourage you to seek out club members and tell us what you would like to see at our discussion meetings. Please visit out facebook page: https://www.facebook.com/PiratesForLiberty.

Jury Nullification

by William J. Holly

Jury Nullification is where a jury returns a verdict of "innocent" for a defendant it believes to be guilty. This amounts to nullifying the law that the accused broke. Some feel that juries should judge whether the accused did the crime, not whether the law is just. They say juries are overstepping their role and are becoming "legislators" in such cases. However, R.J. Tavel, J.D. (State of Indiana v. Linda Thompson, J.D., April 1996) filed an Amicus Curae Brief defending jury nullification as a right and a duty of juries. (See Freedomlaw.com Self Help Legal Clinic)

In fact, Tavel notes that most states have provided for "this right and this power" in their state constitutions. For example, the Oregon Constitution (Article I, Bill of Rights section 16) states: "In all criminal cases whatever, the jury shall have the right to determine the law ... ," i.e. to judge the law. The Georgia Constitution says: "In criminal cases ... the jury shall be the judges of the law and the facts." Several other states, including Texas, Delaware, and Kentucky, hold that the jury is the judge of the law in libel, sedition, and all other cases. (California does not recognize nullification, though jury verdicts in criminal cases are final.) So, why should so many states give juries the right of nullification?

The case for jury nullification begins with noting that jurors are oath-bound to find the facts honestly and ... to return a verdict which they find just and proper. Tavel thinks this is not a grant of right from the state -- it is a "God-given, inalienable right drawn from Deut. 16:20: "Justice, only justice, shall you pursue." In the unhappy event that a conflict should arise between enforcing the law and dispensing justice, meting out justice is the higher duty. Thus, the Indiana Constitution (Article I, Section 3) provides that no law may "interfere with the rights of conscience." This means that no law can compel a jury to convict against its conscience. Tavel says these are "fundamental provisions underlying the consent of the people to be governed by the state."

Finally, Tavel suggests that jury nullification is a last defense against unjust laws: "Legislation ... sometimes is out of step. ... [J]urors, by their verdicts, send legislators non-political democratic feedback about the laws they have enacted, which is essential for the proper functioning of our constitutional Republic. Most importantly, fully informed jurors act as the fourth and final check on the unrestrained often oppressive crush of government prosecutions brought at the whim of state officials for no valid reason concerning public safety but rather for petty, personal, political reasons that have no place in a court of law." In support, he cites the landmark case of jury nullification in the trial of John Peter Zenger.

More details on Zenger's trial can be found in Anthony Lewis' fascinating book, Freedom For the Thought That We Hate: In 1735, Zenger was tried under English common law for seditious libel, the crime of publishing anything disrespectful of the state, church, or its officials. The penalty for conviction of seditious libel could include death, and truth was no defense. However, when Zenger was on trial for publishing an attack on the governor of New York, his attorney told the jury to free Zenger if they judged that his criticisms of the governor were true. The jury found Zenger not guilty, despite the judge's ruling that truth was no defense. News of this act of jury nullification spread throughout the colonies, and discouraged further prosecutions for seditious libel. To quote Tavel: "For many years following the Zenger case, it was generally recognized throughout American jurisprudence that juries in criminal cases had the 'right' to decide the law, as well as the facts, and juries were so instructed."

Tavel ends with a story that Justice Hugo Black used to tell with relish: Years ago, in the foothills of Alabama, a farmer was put on trial for stealing his landlord's cow. The jury knew both parties in this rural community, including the defendant who was beloved by all, and the landlord who was known as a nasty fellow who mistreated neighbors, widows, and orphans. The evidence of guilt was indisputable, but the jury announced the following verdict: "If the accused returns the cow, we find him not guilty." The enraged judge ordered the jury to return to the jury room to reconsider their flagrantly "arrogant" and "illegal" verdict. After a few moments, they emerged to announce their new verdict: "We find the accused not guilty -- and he can keep the cow."

Pirate Journal

A publication of Pirates for Liberty, Pirate Journal is the premier news source for the students of MJC. Our team of student journalists works to report on the conduct and misconduct of MJC's administrators, faculty, and students. Pirate Journal holds itself to rigorous journalism standards and strives to present each story with accuracy, objectivity, and public accountability.

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OPINION

UNJUST BAN!

by Rob A. Van Tuinen

Smoking is probably one of the worst activities that a person can engage in these days. Little respect is given to those who choose to indulge in a cigarette, cigar, pipe (have not seen those in a while) or now the improperly named "electronic cigarette." There's even a bill in the California legislature to treat these e-cigarettes like real cigarettes despite the fact that they do not produce smoke. These individuals cannot even have a smoke without being harassed about how they are "killing themselves and others." The Federal Drug Administration wants to put pictures of cancerous lungs on cigarette packs despite the fact that you would have to live under a rock to be unaware of the risks of smoking. These despised small groups of individuals are being forced out of many places. Do I need to be told that I am killing myself drinking two cans of soda a day? Where do we draw the line?

At an ASMJC Student Senate meeting after the end of the semester, student government brought in an individual, Ken Fitzgerald, from the Stanislaus Advocacy Action Team to pitch the idea for smoke free campuses. This group is a tax payer funded advocacy group that falls under the Stanislaus County Office of Education.

The first question is whether or not it is ethical for a tax payer funded entity to "lobby" for changes which is exactly what the presenter and project director, Ken Fitzgerald, offered to do on behalf of the students of MJC. He also mentioned that students surveyed at a "Health Fair" at MJC expressed an interest in a smoke free campus. It seems to go without saying that students attending a health fair would be quite concerned with their health. He did admit that it was a rather small sample size. Should Tax Payers be forced to fund a specific political agenda? The simple answer should be no.

When pressed about individual rights Mr. Fitzgerald gave some vague reference to courts deciding that "there is no right to smoke." This is a rather odd statement. It's like saying I don't have a right to own a television, but do you have to right to vote to say that I cannot own a television?

There is also the notion of how this will be enforced. It is a question that was asked of student government who responded with blank faces. Mr. Fitzgerald was quick to respond for them saying that students would police themselves. I am not sure if Mr. Fitzgerald has spent much time on a college campus lately, but I am sure there are plenty of unauthorized activities that occur on-campus despite the rules being in place and students' awareness of these rules. There is also the discussion of possible fines being implemented which would require an already overburdened campus safety to police those activities as well. It is important to note that student government can propose fines to the college and district but they have no authority to impose fines themselves. This is something that was reaffirmed by the Student Senate for California Community Colleges recently when discussing funding at their meeting.

Back to campus safety, students receive a barrage of emails throughout the year about stolen cars, bikes, etc. Campus safety exists to protect students and property yet being overburdened with things like policing student speech, the potential policing of smoking and other things; they have less time to focus on their primary mission. The office will continue to compile their reports on stolen cars and bikes while their officers try to control the behavior of students who, for the most part, would rather be left alone.

The final important piece tied to this story is the emergence of a study published in the *Journal of the National Cancer Institute* entitled "No Clear Link Between Passive Smoking and Lung Cancer" that followed 76,000 women of which only 901 developed lung cancer. The article points out that there appears to be no link between secondhand smoke and cancer. This study followed the women allowing the study to truly assess the effect of secondhand smoke and the potential to get lung cancer. Previous studies, as pointed out in the article, relied on an after-the-fact method of asking about contact with secondhand smoke. The dangers of secondhand smoke are often cited by would be nannies as reasoning for smoking bans, Mr. Fitzgerald included, but if there is no proven link, why do we want to control people's behavior? The likely response would be for their benefit but, again, that's tenuous. My soda consumption could be seen as unhealthy so should we control that as well? As referenced on their Facebook page though, they continue to cite the old data saying that a wealth of evidence shows the dangers of secondhand smoke. I, like our friends at Reason magazine, wonder if we can now have an "honest conversation about secondhand smoke."

Joan E. Smith: Time to separate truth from hearsay in Modesto Junior College free-speech lawsuit

BY DR. JOAN E. SMITH

"Sue first, ask questions later." This appears to be the new entrepreneurial business model demonstrated by the Foundation for Individual Rights in Education. For the past six months, the Yosemite Community College District has endured a series of inaccurate reporting, false accusations and organizational character attacks at the hands of this approach to resolve issues.

Unfortunately, the way our legal system works, sometimes institutions of higher education are forced to settle, even when they are being misrepresented, to avoid spending hundreds of thousands of dollars in legal fees. Either way, it's a losing proposition for the college.

There were issues that remained outstanding until late last week. The issues were with respect to correcting multiple erroneous statements on the FIRE website regarding the incident. Now that they have been mostly corrected and FIRE committed to fix the remainder of the inaccuracies, the settlement will proceed.

Recently, FIRE published and distributed another error-filled press release. Let's start with the facts.

FIRE reported that "MJC prevented Mr. Van Tuinen from handing out the Constitution."

Modesto Junior College did not prevent Robert Van Tuinen from handing out copies of the U.S. Constitution. There might be some disagreement on this point, but that did not occur. The reports failed to mention that at the same time Van Tuinen was videotaping his discussion with clerical and district staff on MJC's East Campus, the Associated Students of MJC were handing out U.S. Constitutions on MJC's West Campus in celebration of Constitution Day. This event was well-advertised and extensively publicized on both campuses.

FIRE reported that the district's policies were "unconstitutional."

There was never any finding by the (U.S. District Court in Fresno) that the district's policies violated constitutional free speech principles. The intent of the district's previous policy was not malicious in any way. It was primarily written to maintain order and avoid conflict where opposing groups gathered. It was designed to promote campus safety while still protecting free speech.

FIRE reported that Van Tuinen states he now "will be able to engage in free discussion on campus."

He was able to engage in free discussion before, during and after this incident. He was not stopped from handing out U.S. Constitutions or from videotaping on campus. FIRE further misrepresented a clerical staff member by claiming the individual was an administrator.

The facts are elusive to the media covering this story. Last week, the only news organization that bothered to contact the district for information was The Modesto Bee.

In addition to not raising any issues related to policy beforehand, a videotape was edited and posted on the Internet and on FIRE's website that highlighted the blindsiding of a clerical employee at her desk. Unfortunately, as a result, several employees received and continue to receive death threats and threats of physical violence.

Our employee safety is paramount and the misrepresentation of clerical and district staff has affected several employees' quality of life and professional and emotional well-being.

The bottom line is that district policy was updated to read more clearly and eliminate the advance check-in requirement, among other changes, and these could have been easily addressed through our normal policy review process, which is ongoing.

Although this case has been represented as having nothing to do with money, it has been clear from the beginning that the financial component has driven this lawsuit at least in part, as evidenced by the $50,000 settlement, most of which is going to attorneys.

The reason I am writing this is to speak to the MJC community. MJC cherishes free speech and always will. The misrepresentations that have been occurring over the past six months need to be corrected.

Hopefully, now MJC can go back to the business of education. FIRE claims that they are about free speech. Now that the lawsuit has officially been settled, I have an opportunity to express my views, my free speech, which includes the facts noted above.

Dr. Joan E. Smith is the chancellor of the Yosemite Community College District.

Reprinted with permission from the Modesto Bee, March 3, 2014

RESPONSE TO YCCD CHANCELLOR DR. JOAN E. SMITH'S OPINION PIECE

by Bob L. Van Tuinen

I am not the Robert Van Tuinen who brought the case against Modesto Junior College. I am his father. I would like to respond to the Opinion Piece in the Modesto Bee on March 4, 2014 by Yosemite Community College District Chancellor Dr. Joan E. Smith with documented and supported facts.

Dr. Smith starts by saying "Sue first, ask questions later," suggesting that this is what happened when Robert Van Tuinen sued MJC for violating his First Amendment rights. In fact, the Foundation for Individual Rights in Education (FIRE), a non-partisan, non-profit organization that defends free expression on college campuses, wrote MJC on September 19, 2013 "pointing out that MJC's actions were blatantly unconstitutional and calling on the school to immediately rescind its policies." (http://www.thefire.org/cases/modesto-junior-college-students-barred-from-distributing-constitutions-on-constitution-day/) In the letter FIRE sent to MJC (http://www.thefire.org/fire-letter-to-modesto-junior-college/) they state, "FIRE is willing and able to aid MJC in this effort." The lawsuit was not filed until Oct. 10, 2013, three weeks later, so, in fact, questions were asked first and the suit came later.

Smith further states that there were "multiple erroneous statements on the FIRE website regarding the incident." There were no inaccuracies, just items MJC wanted changed at the last minute to try and save face – hence no discussion of what the inaccuracies were. They mainly had to do with the fact that MJC wanted one of the players to be referred to as a clerical worker rather an as "an administrator." Once again, the case was settled late Monday after both parties had signed the settlement agreement.

At this point Smith wants to go over the facts. She states that "Modesto Junior College did not prevent Robert Van Tuinen from handing out copies of the U.S. Constitution." It is very clear from the video, which is available in its entirety (http://www.youtube.com/playlist?list=PLqO0iYJ35pmywbiCdItaZT62kzHHSjvMv), that Robert Van Tuinen was prevented from handing out copies of the Constitution – he was ordered to stop due to the "time, place and manner policy" that MJC had in place. There was a speaker in the evening on the East Campus who spoke about the Constitution but it is unclear whether copies of the Constitution were ever actually handed out on the West Campus. If they were, why would this have any effect on a student handing out Constitutions on the East Campus?

The reason that there was no finding by the U.S. District Court in Fresno that the policies were unconstitutional is because MJC chose to settle out of court, changing the policies to make them adhere to the Constitution and protecting the Free Speech rights of students and faculty.

Smith once again claims that "He [Van Tuinen] was able to engage in free discussion before, during and after this incident. He was not stopped from handing out U.S. Constitutions or from videotaping on campus." As can be clearly seen in the video, he was stopped and told that he had to request permission to hand them out and it would have to be done in the "free speech area." Both of these requirements are unconstitutional.

Dr. Smith then refers once again to the death threats employees continue to receive. While being very unfortunate, I would like to see copies of the death threats. This, however, has nothing to do with Robert Van Tuinen or FIRE. It has more to do with the fact that MJC administrators and the YCCD wanted to maintain unconstitutional control over students and staff.

Her suggestion that the lawsuit was, in part, driven by the financial component is absolutely ridiculous. The legal fees alone are very likely to exceed the $50,000 that MJC is obligated to pay under the settlement agreement. Robert Van Tuinen nevertheless settled the case because he achieved his goal of getting MJC to conform its policies to the Constitution.

Finally, she says that MJC has been misrepresented in the last six months. I submit that Chancellor Smith is not only misrepresenting the facts of the last six months, as evidenced here and supported with documentation, but is doing a disservice to Robert Van Tuinen, as well as continuing to shed a bad light on MJC.

"First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either teachers or students shed their constitutional rights to freedom of speech or expression at the schoolhouse gate... In our system, state operated schools may not be enclaves of totalitarianism. ... Students may not . . . be confined to the expession of those sentiments that are officially approved." Tinker v.Des Moines Independent Community School District, 393 U.S. 503 (1969)

ON CAMPUS SMOKING BAN?

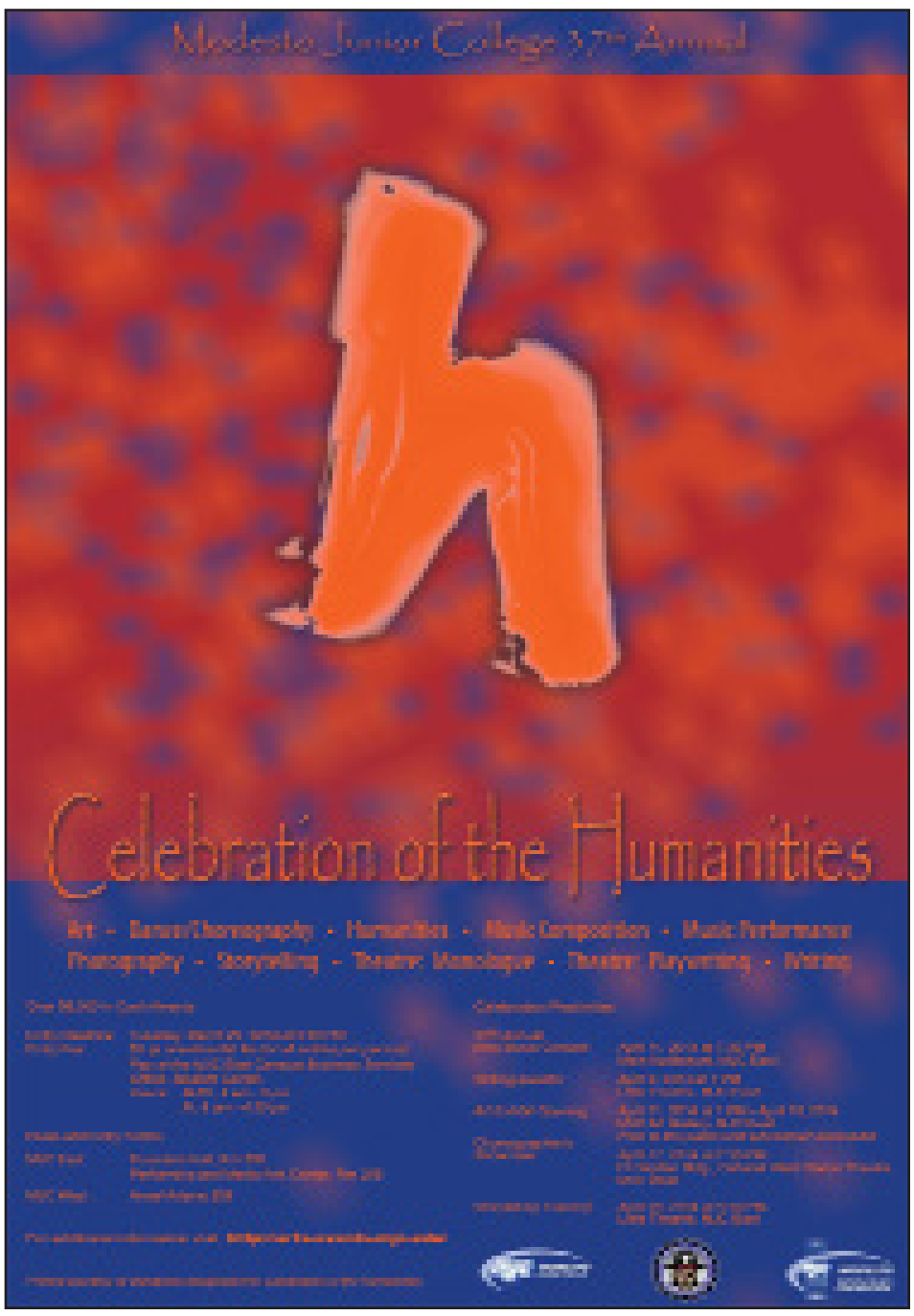
by Genesis Ramirez

At a public meeting December 13th, 2013 a speaker from the Stanislaus County Office of Education presented a smoking ban campaign to the Associated Students of Modesto Junior College student senate. Mr. Ken Fitzgerald, the Stanislaus Advocacy Action Team project director, went over the Yosemite Community College District's current board policy during the public meeting in order to inform that it does not cover a smoke-free campus, therefore offering to partner with MJC to develop a program, provide brochures, and host events in hopes of making the Modesto Junior College campus smoke-free. He cautioned about the harmful effects of secondhand smoke and about the health threats posed by the toxicity of cigarette butts throughout the community. According to the California Department of Health website, StAAT's mission is to "serve the general population as a resource for training and technical assistance for initiatives that prevent tobacco use and reduce exposure to secondhand smoke in Stanislaus County." Further into their project abstract description, it is stated that training participants and members will exercise skills to work toward two project initiatives. The first initiative "will include establishing smoke-free policies for career college campuses," and the second "will focus on creating smoke-free city and county parks" -- both of which will purportedly serve to protect the people from exposure to secondhand smoke. StAAT works alongside other similar organizations such as the Protecting Health and Slamming Tobacco (PHAST) Youth Coalition, the Ceres Partnership for Healthy Children Project, HEART Coalition and the Tobacco-control Outreach and Prevention Services (TOPS) Coalition.

Ken Fitzgerald and his team emphasize the dangers of secondhand smoke (commonly referred to as SHS or environmental tobacco smoke, ETS) because it is a cancer-causing agent that contains thousands of chemicals — hundreds of which are said to be detrimental to human health. Secondhand smoke was declared a toxic air contaminant since it is *believed* to carry nicotine, toxic chemicals, and higher concentrations of carcinogens than mainstream smoke in smaller particles which enable these to move into the people nearby with more ease. The StAAT and the PHAST teams attend local events and they gather the litter and tobacco-litter from public parks and areas throughout the Stanislaus county to serve as a visual aid for their presentations. These "Butt Hunts" measure the amount of smoking done on these premises in hopes of forming a strong "before and after policy" impact on the community. Earlier in 2013, according to the turlockcitynews.com website article "Parks and Recreations Commission Support Smoke-Free Parks in Turlock", PHAST and StAAT collected 16,024 cigarette butts from nine separate events — 1,977 of which were found in Turlock alone from only two events. This was part of Ken Fitzgerald's presentation for the Turlock Parks and Recreation Commission on the day they voted for smoke-free parks from which Cara Hallam reports, "Commission Chair Barney Gordon was the only commissioner to vote in opposition to taking action at the meeting, solely because he believed it would've been prudent to hold a public forum on the matter first and have more community involvement on the issue before taking action."

Since StAAT is a tax-payer funded project of the Stanislaus County of Education that bases their information on polls at various health fairs, some might say that this offers a skewed perspective as it is likely that a person at a health fair is going to be very concerned for their health and vote accordingly. This has caused uneasiness in some students and faculty as it may seem unfair that the polls are not surveying the MJC community at large beyond the health fairs -- they are not being conducted in areas where smokers and nonsmokers both would be present to be asked whether or not they would like to work towards a smoke-free campus for all. Since January 1, 2008 the State of California has already banned smoking within 20 feet of any entrance or operable window in a public building (state, county, city, or a California Community College District). MJC is a public institution where the laws of the state apply to every individual equally on both campuses. Although there are no designated smoking areas on the campuses besides the Pirate's Village triangle on the East campus, the 20-feet law has served to protect the rights of smokers and non-smokers alike.

According to the ASMJC President Andrew Campbell, this issue has been discussed before but never with any further action occurring. The StAAT, however, has publicly stated on their stancoe.org website that they are "look[ing] forward to working with Modesto Junior College this coming school year."



"The central purposes of a University are the pursuit of truth, the discovery of new knowledge through scholarship and research, the teaching and general development of students, and the transmission of knowledge and learning to society at large. Free inquiry and free expression within the academic community are indispensable to the achievement of these goals. The freedom to teach and to learn depends upon the creation of appropriate conditions and opportunities on the campus as a whole as well as in classrooms and lecture halls.... Free speech and peaceable assembly are basic requirements of the University as a center for free inquiry and the search for knowledge and insight." Quoted from The Shadow University by Kors & Silverglate (1998).

MJC club meeting times

Red Nations & Friends
Saturdays 1:00pm
Founders Hall 155

Black Student Union
Fridays 12:30pm
Founders Hall 120

Psychology Club
Tuesdays 4:00pm
Founders Hall 178

Anthropology Club
Tuesdays 4:30pm
Pirates Village 104

Mecha
Mondays 3:00pm
Founders Hall 135

Visual Arts Club
Wednesday 4:30pm
The Art Gallery

First Year Experience
Wednesday 4:00pm
Yosemite 117

Gamers Club
1st and 3rd Monday
5:00pm
The MSR

Young Americans for Liberty
1st and 3rd Thursday
5:00pm
Forum 101
1st Thurs - Business Mtg
3rd Thurs - Discussion/Presentation Meeting

Student Equality Organization
Mondays 2:00pm
Student Services 127

NAMI on Campus
Thursdays 1:15pm
Founders Hall 151

International Club
Thursday 4:00pm
Founders Hall 172

College Republicans
2nd and 4th Tuesday
3:30pm
Sierra Hall

Geology Club
Thursdays 4:30pm
Science Community Center 326

Astronomy Club
Thursdays 5:00pm
Science Community Center 133